

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2809 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DINESHCHANDRA KALIDAS & CO

Versus

STATE OF GUJARAT

Appearance:

MR MC SHAH for Petitioners

SERVED BY DS for Respondent No. 1

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 07/02/97

ORAL JUDGEMENT

Rule.

I have heard both the sides at length on merits.
I, therefore, proceed to dispose of this petition finally. M/s. Dineshchandra Kalidas & Co. of village Abdasan, Tal. Idar, Dist : Sabarkantha, has filed the present petition to challenge the order passed by the Collector to confiscate the food articles of maize,

wheat, udid and til valued at Rs.71,140/- under the provisions of Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981.

2. On 29th November, 1991, the Mamlatdar of Idar had inspected the shop of the present petitioner and at that time he found that 100 bags of maize were loaded in the truck from his shop and he had also found stock of wheat, udid and til in his shop. He found that the accounts were not written by the petitioner from 11th July, 1991. No bills were also prepared. He accordingly prepared a seizure memo and seized all those articles and submitted his report to the Collector Sabarkantha. Thereafter, a show cause notice was issued to the present petitioner by the Collector to show cause as to why the said goods should not be seized. Therefore, the Collector on considering the material before him passed an order of confiscation of the foodgrain found at the time of inspection. Against the said order, the present petitioner had preferred an appeal before the State Government and his appeal has been dismissed by order dated 14th September, 1995 and he has come before this court.

3. At the time of hearing of this Writ Petition, it is submitted before me by the learned advocate for the petitioner that the petitioner was not supplied the copy of statement of Virchand Chhaganbhai. As the said statement was not supplied, the action taken against him is vitiated. But there is nothing on record to show that the petitioner had made any claim to supply the copy of the statement and petitioner had ever made a grievance either before the Collector or before the Appellate Court that he has not been supplied the said statement. When the petitioner had not made the grievance either before the original authority as well as before the Appellate Authority that he was not supplied the copy of the statement, he cannot be permitted to raise such contention for the first time in his Writ before this court. It is a clear case of after thought to raise such a contention because originally when the petition was filed, the petitioner had not raised such a contention and such a contention is being raised only after seeking the amendment of the petition.

4. From the material on record, it would be quite clear that at the time of inspection, it was found that the petitioner had not prepared any bills of sale of the foodgrains and he has also not written the stock register from 14th July, 1991. The petitioner tried to explain the same by raising a contention before the Appellate Authority that as his sister in law was sick, he had

stopped his business and because he had stopped his business, he could not maintain and write the books and the goods which were seized were not also belonging to him. But that claim of him is not accepted by the Appellate Court and that finding of the Appellate Court in not accepting his contention could not be said to be perverse. From the material on record it is quite clear that the stock of wheat, udid and til was found in his house. Only maize was seized from the truck which was parked in front of his house. The shop of the petitioner is situated in a village and if the stock seized from his house is taken into consideration, then his claim that he has stopped his business could not be at all believable and acceptable. No prudent man could accept such a contention made on behalf of the petitioner. Therefore, in the circumstances, the charge against the present petitioner that he has not written bill of sale and had not also maintained stock register from 14th July, 1991 till 29th November, 1991 will have to be accepted and the petitioner being found at fault in not writing the same, could not be interfered with by exercising the discretionary powers under Article 227 of the Constitution of India.

5. Therefore, in view of the above discussion, it would be quite clear that the petitioner has committed the breach of Rule 23 of the said order of 1981. Therefore, the only question to consider is as to whether penalty awarded to the petitioner of confiscating his goods to the extent of 100 % is to be maintained or not. The learned advocate for the petitioner has cited before me the case of N.NAGENDRA RAO & COMPANY V. STATE OF ANDHRA PRADESH 1995 (1) G.L.H., 298 and has put reliance on the following head notes :

(J) Essential Commodities Act, 1955-S. 6-A

(1)-Confiscation- Nature of power and manner of its exercise explained- Exercise of power should be reasonable, fair and to promote objectives of the Act- Every contravention not to entail confiscation- Confiscation only if Collector is satisfied.

Those who are entrusted with responsibility implement it should act with reasonableness, fairness and to promote the purpose and objective of the Act. Further, it should not be lost sight of that the goods seized are liable to be confiscated only if the Collector is satisfied about violation of the

Control Orders. The language of the section and its setting indicate that every contravention cannot entail confiscation. That is why the section uses the word 'may'. A trader indulging in black marketing or selling adulterated goods, etc. should not, in absence of any violation, be treated on a par with technical violations such as failure to put up the price-list, etc. or even discrepancies in stock.

He also cited before me the case of M/s GOVIND KARSAN AND CO. V. STATE & ANR.. 1983 (1) 24 G.L.R., 145 and has put reliance on the following head notes.

"If on facts it is found that the nature of contravention is merely technical, and it has no bearing on the supply of the commodity in question and if it is not likely to disarray the stream of supply in the market, then in that case, the authorities may exercise the discretion in favour of the dealer and may order to confiscate the quantity to a lesser extent than which has been found in excess of the prescribed limit. However, the absence of mens rea or dishonest intention would not make a contravention of the provisions of the terms of licence a technical one."

If the above cases cited by the learned advocate for the petitioner are taken into consideration, then it would be quite clear that a trader who indulges in black marketing or selling adulterated goods could not be treated as committing technical violation. As stated earlier the breach committed by the present petitioner is not of preparing bills and not writing stock register. It is very pertinent to note that in the show cause notice issued to the present petitioner, there is no claim of the revenue authorities that as the Mamlatdar had received complaints against the present petitioner of he indulging in black marketing or creating artificial shortage, Mamlatdar had paid visit to his shop on that fateful day of 29th November, 1991. Even in his order of confiscation, the Collector also does not say that there were complaints against the present petitioner that he was indulging in black marketing. He has not also given any specific reason as to why he was ordering 100 % confiscation. No doubt, the conduct of the present petitioner in not writing accounts for months together could not be also treated as a mere technical offence. Therefore, in the circumstances, taking into

consideration the commission of offence by the present petitioner as has been proved against him and the fact that it is not the claim of the revenue department that the petitioner was indulging in black marketing or creating artificial shortage , I hold that the confiscation of the goods to 100% is not justified. Taking into consideration his conduct in not writing accounts for four months together and the fact of the domestic difficulties of the petitioner I hold that the confiscation of the goods to 30% would be justified in this case. I, therefore, partly allow the present petition and set aside the order of Collector to confiscate 100% of goods and order that 30% of the goods of the petitioner be confiscated. In the circumstances, I direct the parties to bear their respective costs and the rule is made absolute accordingly.

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